

ESTTA Tracking number: **ESTTA642436**

Filing date: **12/03/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

| | |
|---------------------------------------|---|
| Name | VIEWBIQUITY, LLC |
| Granted to Date of previous extension | 12/03/2014 |
| Address | 409 GOOLSBY BLVD. DEERFIELD BEACH, FL 33442 UNITED STATES |
| Attorney information | Alice Sum Fowler White Burnett, PA 1395 Brickell Avenue, 14th Floor Miami, FL 33131 UNITED STATES asum@fowler-white.com Phone:3057899212 |

Applicant Information

| | | | |
|------------------------|--|------------------------|------------|
| Application No | 85843704 | Publication date | 08/05/2014 |
| Opposition Filing Date | 12/03/2014 | Opposition Period Ends | 12/03/2014 |
| Applicant | VUBIQUITY, INC. 1881 CAMPUS COMMONS DRIVE, SUITE 101 RESTON, VA 20191 UNITED STATES | | |


Goods/Services Affected by Opposition

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| Class 035. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Distribution of promotional materials promoting the motion pictures, movies, audio programming, and television programming of others |
| Class 038. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Broadcasting of movies, events, television programs and music programs; provision of telecommunication access to movies, events, television programs, music, promotional materials and other video and audio content provided via a video-on-demand service; video on demand transmission services; satellite, cable, wireless, fiber optic, internet protocol television (IPTV), and global computer network transmission of movies, events, television programs and music programs and associated metadata |
| Class 041. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Cable television programming; distribution of motion pictures, movies, audio and visual programming, and television programming; distribution of motion pictures, movies, audio and visual programming, and television programming to cable television systems; distribution of motion pictures, movies, audio and visual programming, and television programming to internet protocol television (IPTV) transmission systems |


Grounds for Opposition

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|--------------------------------------|----------------------------|
| Priority and likelihood of confusion | Trademark Act section 2(d) |
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Marks Cited by Opposer as Basis for Opposition

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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 4037684 | Application Date | 01/09/2011 |
| Registration Date | 10/11/2011 | Foreign Priority Date | NONE |
| Word Mark | VIEWBIQUITY | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | <p>Class 009. First use: First Use: 2009/09/18 First Use In Commerce: 2010/09/01 Computer software for connecting wired or wireless devices to enterprise computing applications which allows remote access for controlling, servicing, data acquisition, data streaming, managing, and monitoring the devices or sensors via a global computer network and the exchange of information between such devices or sensors and enterprise computing applications; downloadable global computer network-based software for interactive publishing of real-time or historical information to and from devices or sensors</p> <p>Class 041. First use: First Use: 2009/09/18 First Use In Commerce: 2010/12/15 Educational services in the nature of conducting training related to computer software that allows users to connect, manage, service, supervisory control, data acquisition, data streaming and/or track wired and wireless devices, sensors, equipment and other assets; training in the usage, support and/or development of computer software; educational services in the nature of conferences in the field of advertising, marketing and business development for the remote service software market; on-line blogs featuring information and commentary in the field of the remote service software market</p> <p>Class 042. First use: First Use: 2009/09/18 First Use In Commerce: 2010/09/01 Software as a service (SAAS) services, namely, hosting software for users in connection with the management, servicing, supervisory control, data acquisition, data streaming and/or tracking of wired and wireless devices, sensors, equipment and other assets, monitoring, communicating, collecting, storing and transmitting data related to such assets; computer software development services and computer consulting services for businesses, computer consultancy services for the design, selection, implementation, modification, maintenance and use of computer software systems; technical advice related to the installation of computer software; technical support services, namely, troubleshooting in the nature of diagnosing computer hardware and software problems; computer diagnostic services; computer consultancy services in the nature of advising and assisting with the implementation, installation, configuration, modification and maintenance of computer software that allows users to connect, manage, service, su-</p> | | |

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| | pervisory control, data acquisition, data streaming and/or track wired and wireless devices, equipment and other assets |
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|-----------------------|--|-----------------------|------------|
| U.S. Registration No. | 3716834 | Application Date | 02/12/2009 |
| Registration Date | 11/24/2009 | Foreign Priority Date | NONE |
| Word Mark | VIEWBIQUITY | | |
| Design Mark |  | | |
| Description of Mark | NONE | | |
| Goods/Services | <p>Class 009. First use: First Use: 2009/09/18 First Use In Commerce: 2009/09/18 Surveillance equipment, namely, infrared observation systems comprised of infrared detectors; mobile video monitoring systems comprised of video monitors and video cameras; video door phones; wireless observations systems comprised of wireless video cameras and video monitors; video monitors and voice display monitors; micro video cameras; micro digital cameras and micro photographic cameras; video dome cameras; bullet cameras; pan-tilt-zoom cameras; armored cameras; anti-vandal cameras; professional cameras; smoke detector cameras; motion detectors with built-in color video cameras and motion detectors with built-in color digital cameras; wireless digital camera incorporating clock radio; remote controls for video dome cameras, Internet Protocol cameras, digital video recorders, network video recorders, hybrid video recorders, multi-channel signal processors, multichannel video processors and multichannel satellite processors; fingerprint access control devices, namely, biometric fingerprint scanners, video monitors that are able to receive sound and video images from video cameras via the telephone, and all related accessories, namely, camera lenses, computer cables, software used in digital video recorders, network video recorders, and hybrid video recorders used to set up and control analog and digital networks of security cameras, facial recognition, license plate recognition, point of sale integration, process improvement software based on video, and other video camera software and recording applications, and power supplies</p> | | |

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| Attachments | 85213654#TMSN.png(bytes) 77669359#TMSN.png(bytes) Notice of Opposition VUBIQUITY No 85843704.pdf(95641 bytes) |
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

| | |
|-----------|-------------|
| Signature | /Alice Sum/ |
| Name | Alice Sum |
| Date | 12/03/2014 |

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

| | | |
|-------------------|---|-----------------------------|
| VIEWBIQUITY, LLC, |) | |
| |) | |
| Opposer, |) | In re Serial No. 85/843,704 |
| |) | |
| v. |) | |
| |) | |
| VUBIQUITY, INC., |) | Opposed Mark: VUBIQUITY |
| |) | |
| Applicant. |) | |
| _____ |) | |

NOTICE OF OPPOSITION

Opposer, Viewbiquity, LLC (“Viewbiquity” or “Opposer”), believes it will be damaged by the registration of the mark VUBIQUITY, Serial No. 85/843,704, filed by Vubiquity, Inc. on February 7, 2013 and opposes same. Viewbiquity, having previously been granted an extension of time to oppose up to and including December 3, 2014, hereby opposes registration of the mark and on the grounds that follow.

1. Viewbiquity, LLC is a limited liability company existing under the laws of Florida and having an address at 409 Goolsby Boulevard, Deerfield Beach, Florida 33442.

2. Vubiquity, Inc. (“Applicant”), is a corporation organized under the laws of the Delaware, having an address of 1881 Campus Commons Drive, Suite 101, Reston, Virginia 20191.

3. Viewbiquity is the owner of the following marks:

a. Registration Number 4037684 for the mark VIEWBIQUITY in connection with "computer software for connecting wire or wireless devises to enterprise computing applications; educational services in the nature of conducting training related to computer software; software as a service (SAAS) services, namely, hosting software users in connection

with the management, servicing, supervisory control, data acquisition, data streaming and/or tracking of wired and wireless devices", etc. and

b. Registration Number 3716834 for the mark VIEWBIQUITY in connection with "surveillance equipment, namely, infrared observation systems comprised of infrared detectors."

4. Applicant seeks to register VUBIQUITY (Serial No. 85/843,704) as evidenced by the publication for opposition in the Official Gazette on August 5, 2014 ("Opposed Application").

5. Viewbiquity alleges that there is a likelihood of confusion between its registered marks and the opposed mark for use in connection with:

a. "Distribution of promotional materials promoting the motion pictures, movies, audio programming, and television programming of others"

b. "Broadcasting of movies, events, television programs and music programs; provision of telecommunication access to movies, events, television programs, music, promotional materials and other video and audio content provided via a video-on-demand service; video on demand transmission services; satellite, cable, wireless, fiber optic, internet protocol television (IPTV), and global computer network transmission of movies, events, television programs and music programs and associated metadata" and

c. "Cable television programming; distribution of motion pictures, movies, audio and visual programming, and television programming; distribution of motion pictures, movies, audio and visual programming, and television programming to cable television systems; distribution of motion pictures, movies, audio and visual programming, and television programming to internet protocol television (IPTV) transmission systems"

6. There is a likelihood of confusion because:

a. VIEWBIQUITY and VUBIQUITY are confusingly similar in appearance, sound, connotation and commercial impression. The applied-for VUBIQUITY mark and the registered marks VIEWBIQUITY have identical sounds. The only difference between the marks is the spelling "VU" instead of "VIEW". It is likely that consumers will believe that Applicant's goods originate from the same source as Viewbiquity's goods, and registration of Applicant's mark will cause damage to Viewbiquity's registrations.

b. The consumers and the trade channels of the goods and services are very similar, if not the same. Applicant's targeted customer base overlaps with Viewbiquity's customers and potential customers. The goods and services of Applicant and Viewbiquity both go after the same service provider market (Viewbiquity's software powers home and business automation systems that service providers sell to their customers). Applicant's goods and services description contains no restrictions or limitations as to Applicant's channels of trade; thus Viewbiquity may assume Applicant's mark, like Viewbiquity's marks, will be used in all acceptable channels of trade. Therefore, in addition to overlapping consumer bases, Applicant's intended channels of trade for its products overlap with channels of trade used by Viewbiquity in marketing, selling and otherwise distributing its products.

7. If Applicant is permitted to register its VUBIQUITY mark in the Application herein opposed, confusion resulting in damage and injury to Viewbiquity would likely occur. Persons familiar with Viewbiquity marks would likely perceive Applicant's products as associated, affiliated with, or sponsored by Viewbiquity. Such confusion would inevitably result in damage to Viewbiquity.

8. Any defect, objection to or fault with Applicant's goods marketed under its VUBIQUITY mark would necessarily reflect on and seriously injure the reputation that Viewbiquity has established for its goods and services.

WHEREFORE, Viewbiquity, LLC respectfully requests that the Trademark and Trial and Appeal Board grant this Opposition and deny Vubiquity, Inc.'s application to register the VUBIQUITY mark, Serial No. 85/843,704.

December 3, 2014.

Respectfully submitted,

/s/ Alice K. Sum

Alice K. Sum

Fla. Bar No. 354510

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Attorneys for Opposer Viewbiquity, LLC

CERTIFICATE OF MAIL AND CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this paper is being submitted electronically via the Electronic Filing System for Trademark Trial and Appeals on this 3rd day of December, 2014.

I FURTHER HEREBY CERTIFY that a true and correct copy of the foregoing was served on to Counsel for Applicant this 3rd day of December, 2014 by delivering same via First Class Mail, postage prepaid, and by Federal Express to:

Susan Christoff
Peter J. Willsey
COOLEY LLP
1299 Pennsylvania Avenue NW
Suite 700
Washington, DC 20004-2431

/s/ Alice K. Sum

Alice K. Sum

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